

Date of decision: 06/02/96

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DAHYABHAI KALIDAS SONI

vs

STATE OF GUJARAT

Appearance:

MR YN OZA	for Petitioner
V.B.Gharania, AGP	for Respondent.

Coram : MR.JUSTICE C.K.THAKKER

ORAL JUDGEMENT

Rule. Mr.Gharania, Assistant Government Pleader waives service of rule on behalf of the respondent. In the facts and circumstances of the case, the matter is taken up to day for final hearing.

This petition is filed by the petitioner for an appropriate writ, direction and/or order directing the authorities to promote the petitioner to the post of Executive Engineer with effect from

the date on which his immediate junior one Mr.P.D.Nagvadia was promoted to the said post by granting all consequential and incidental benefits.

It is the case of the petitioner that he was working as Deputy Executive Engineer. In January 1989, when Departmental Promotion Committee met for considering names of Deputy Executive Engineers for promotion to the post of Executive Engineers, name of the petitioner was also considered since he was within the zone of consideration. On account of the charge-sheet, however, which was issued against the petitioner in April 1987 for alleged incident of 1981-82, the case of the petitioner was considered but it was kept in sealed cover and some persons junior to the petitioner came to be promoted to the post of Executive Engineer. It is his case that the inquiry was conducted for unreasonable long period and finally he came to be exonerated at the inquiry. It is further stated in the petition that only with a view to deprive him of promotional avenue once again another departmental inquiry was initiated against him in 1994 for the alleged incident of 1983-84 and the said inquiry is pending and on the ground of such inquiry the petitioner is not promoted.

When the matter came up for admission, my learned brother H.L.Gokhale J. issued notice to the other side on March 6, 1995 by making it returnable on March 27, 1995. Thereafter the matter was adjourned from time to time.

Affidavit-in-reply is filed by one J.G.Vora, Under Secretary, Narmada and Water Resources Department, and in para 4 it was stated as under:

4. At the out-set, I say and submit that the petitioner has filed this petition to promote him on the post of Executive Engineer. I say that as the Departmental Enquiry is going on against him, while considering the case of the petitioner, for promotion on the post of Executive Engineer the recommendations of the Departmental Promotions Committee were kept in "Sealed Cover" in accordance with the G.R. G.A.D. dated 23.9.81. However, in accordance with the provisions contained in the Government Resolution, General Administration Department dated 2.4.83 and 30.10.93, the petitioner's case was reviewed by the Departmental Promotion Committee in its Second Meeting held on 23.8.95 and he is now recommended for the adhoc promotion on the post of Executive Engineer as per the Government Resolution guidelines. Such recommendations have since been accepted by the Government. In pursuance of the statutory provisions, prior too grant of any promotions to Class-I State Service, prior approval of the Gujarat Public Service Commission is required to be obtained. Accordingly, the proposal were referred to the

Gujarat Public Service Commission and now the approval of the Gujarat Public Service Commission for grant of adhoc promotion to the petitioner has since been received by Government on 16.12.95. Therefore, now the case of the petitioner would be submitted to Government for grant him promotion on the post of Executive Engineer."

It was stated in the counter that in view of the pendency of the departmental inquiry when Departmental Promotion Committee met findings of the Departmental Committee about suitability was kept in a sealed cover in accordance with the instructions of the Government Resolution dt. September 23, 1981. It was then stated that it was true that the petitioner came to be exonerated at the said inquiry by an order dt. May 9,, 1994 and the Government accepted the said exoneration. But the second charge-sheet came to be issued to the petitioner.

Mr.Oza, learned counsel for the petitioner submitted that in any case, the petitioner may be granted two reliefs, first is that in view of the statement made in para 4 extracted hereinabove, the Departmental Committee in its meeting dt. July 22, 1995 has found the petitioner suitable for promotion and is now recommended for ad.hoc promotion on the post of the Executive Engineer and that such recommendations have since been accepted by the Government, an appropriate direction may be given to the authorities so that the said decision can be implemented as expeditiously as possible. Secondly, it is submitted that with regard to second inquiry, which is of 1995 the incidents are of remote past and in these circumstances, even if the inquiry is not quashed, the court may direct the respondent authorities to expedite the said inquiry and to complete within a reasonable period.

In my opinion, the submissions are well founded and must be accepted. So far as the recommendation is concerned, since the departmental promotion committee found the petitioner fit, and recommended for promotion to the post of Executive Engineer and as such recommendations have been accepted by the Government, it is directed that the respondent authorities will implement the said direction as expeditiously as possible preferably within six weeks from the date of the receipt of the certified copy of this judgment. Similarly so far as the inquiry is concerned, it is directed that the respondent authorities will expedite the inquiry and finalise it as expeditiously as possible. Rule is made absolute to the above extent. No order as to costs. Liberty to apply in case of necessity.

If there is gross and unreasonable delay on the part of the respondent authorities in completing the inquiry, it is open to the petitioner to take appropriate proceedings in accordance with law.

DS.

\*\*\*\*\*